

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANTHONY JOHNSON and	:	CIVIL ACTION
NOMINAL (BLACK AMERICANS)	:	
	:	
V.	:	
	:	
ROBERT L. DAVIS, et al.	:	NO. 98-4380

**MEMORANDUM AND ORDER**

YOHN, J. January , 1999

Anthony Johnson, a pro se petitioner, filed a civil rights action, under 42 U.S.C. § 1983, against a federal district court judge, a state court judge, the United States Court of Appeals for the Third Circuit, two district attorneys, three police officers and a prison official, which was dismissed as legally frivolous under 28 U.S.C. § 1915 (e)(2)(B)(i), on September 2, 1998. Johnson, who also claims to represent the “nominal Plaintiff (Black Americans),” then filed motions for relief from judgment, to reinstate the complaint, and to amend the complaint. Johnson will be permitted to amend his complaint in accordance with this opinion, as provided by Fed. R. Civ. P. 15 (a).

**BACKGROUND**

Johnson’s original complaint sought damages, injunctive and declaratory relief to prevent the police from continuing to enforce the registration requirements of Megan’s Law against him.<sup>1</sup>

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<sup>1</sup> Megan’s Law requires convicted sex offenders to register with the Pennsylvania State Police for ten years after their release from confinement. See 42 Pa. Cons. Stat. Ann. § 9793 (West 1998). Johnson was apparently required to register with the police as a result of a prior assault conviction.

He alleged that the defendants' application of the registration requirement to him violated his constitutional rights because they were "maintain[ing] an illegal conviction and annex[ing] further penalties to said conviction." Complaint, at 4. Johnson also complained that defendants refused to investigate his contention that his conviction resulted from the "criminal activities" of executive and judicial branch officers, thereby failing to reveal the illegal actions of the public officials responsible for his conviction. See id.

The portion of Johnson's complaint seeking damages was dismissed because "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." Heck v. Humphrey, 512 U.S. 477, 486-87 (1994) (holding that § 1983 did not permit plaintiffs to seek damages resulting from an allegedly unconstitutional conviction or penalty unless the conviction or penalty had been previously invalidated). The remainder of Johnson's complaint, seeking declaratory and injunctive relief, was dismissed because the court interpreted his allegations as "a challenge to the fact or duration of his prior period of confinement, which may only be brought in a petition for a writ of habeas corpus." Johnson v. Davis, No. 98-4380, slip. op. at 2 (E.D. Pa. Sept. 2, 1998) (citing Preiser v. Rodriguez, 411 U.S. 475, 489 (1973)).

Johnson now claims that the court ignored that portion of his complaint which alleged that various defendants conspired to subvert or sabotage the federal habeas corpus process. See Motion for Relief from Judgment, at 4. He appears to admit that he may not challenge the invalidity of his conviction, or the penalties flowing from that conviction, in the current proceeding, but avers that he will amend his complaint to exclude those allegations and will focus solely on the conspiracy allegations. See id. n. 3 ("Plaintiff hereby deletes all claims of the illegal conviction, and will sue the defendant for sabotaging the Writ of Habeas Corpus process,

only (which violates the 14th amendment)"); Motion to Amend, at ¶ 1.

## DISCUSSION

The court will not reconsider its ruling that Johnson's claims concerning the application of Megan's Law's registration requirements to him may not be raised in this § 1983 action. To award damages to Johnson based on a ruling that the Megan's Law was illegally applied to him would necessarily imply that his underlying assault conviction, which formed the basis for applying Megan's Law to him, was invalid. Because Johnson has not claimed that his underlying conviction has been invalidated, these claims are not permitted by Heck, 512 U.S. at 486-87. Johnson has, however, indicated his willingness to abandon these claims.

Johnson seeks to amend his complaint to allege claims that various defendants conspired to violate his constitutional rights by sabotaging the federal habeas corpus process. Because it is theoretically possible that Johnson may be able to state a claim for civil conspiracy under § 1983 based on this theory, leave to amend will be permitted.<sup>2</sup> In order to state a valid claim for civil

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<sup>2</sup> Johnson asserts that his claim is permissible under Monell v. Department of Social Serv., 436 U.S. 658, 690-91 (1978). Monell, however, only held that § 1983 provides a cause of action against municipalities when the local government's "policy or custom" violates citizens' constitutional rights. See id. at 694. It is not clear from Johnson's original complaint which defendants are involved in the alleged conspiracy. If Johnson seeks to allege that state officials were involved in the alleged conspiracy, and he seeks damages against them, he may only sue them in their individual, and not their official, capacities. See Hafer v. Melo, 502 U.S. 21, 26, 30-31 (1991). If Johnson seeks to allege that Judge Pollak, or any other federal court judge, was involved in the alleged conspiracy, he will only be able to state a § 1983 claim if the federal judge was conspiring with a state actor, and the state actors had a significant role in causing the constitutional violation. See Francis-Sobel v. University of Maine, 597 F.2d 15 (1st Cir.), cert. denied, 444 U.S. 949 (1979); Hampton v. Hanrahan, 600 F.2d 600, 623 (7th Cir. 1979), rev'd on other grounds, 446 U.S. 754 (1980) (per curiam) (implying that though federal officials may not normally be sued under § 1983, federal officials who conspire with state actors may be considered to have acted "under color of state law"). Johnson should be aware, however, that judges are entitled to absolute immunity for damages claims under § 1983 for all of their judicial actions, and contrary to his assertions, the invocation of immunity is not the same as an

conspiracy under § 1983, Johnson must allege specific facts showing a “combination, agreement or understanding among all or between any of the defendants . . . to plot, plan or conspire to carry out the alleged chain of events.” Spencer v. Steinman, 968 F. Supp. 1011, 1020 (E.D. Pa. 1997) (quotations omitted); Loftus v. SEPTA, 843 F. Supp. 981, 987 (E.D. Pa. 1994). Johnson should also ensure that his amended complaint constitutes “a short and plain statement of the claim showing that [he] is entitled to relief.” Fed. R. Civ. P. 8 (a)(2). Johnson should thus specify which defendants were involved in the alleged conspiracy, and how each participated.

Johnson’s motion to amend also seeks to add a new defendant who is a Pennsylvania State Trooper, Captain Thomas LaCrosse. See Motion to Amend, ¶ 2. Johnson is only permitted to add LaCrosse as a defendant if he was involved in the alleged conspiracy to subvert Johnson’s federal habeas petition. In his amended complaint, Johnson may only assert claims against those defendants who were involved in that alleged conspiracy, and may not assert claims against individuals whose only connection to him is their participation in enforcing Megan’s Law’s registration requirements against him.

## **CONCLUSION**

Johnson’s motion to amend his complaint is granted with respect to his claims concerning the sabotage of his federal habeas petition. His motions for relief from judgment and to reinstate the other claims which were dismissed by the court’s September 2, 1998, order are denied.

An appropriate order follows.

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admission that the constitutional violation occurred. See Stump v. Sparkman, 435 U.S. 349, 362 (1978).

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**ORDER**

AND NOW, this \_\_\_\_ day of January, 1999, after consideration of Johnson's Motion for Relief from Judgment, Motion to Reinstate Civil Action No. 98-4380, and Motion to Amend Complaint, IT IS HEREBY ORDERED that Johnson's Motions for Relief from Judgment and to Reinstate his original complaint are denied, but the Motion to Amend is granted and Johnson may file an amended complaint in accordance with the court's memorandum within thirty days of the date of this order.

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William H. Yohn, Jr., J.